# APPENDICES

SUBJECT, EXCEPT AS OTHERWISE PROVIDED, TO ITEM X-212-A

# APPENDIX A

SUPPLEMENT TO ICC 5497

UNION PACIFIC RAILROAD COMPANY

SUPPLEMENT 11

TO

FREIGHT TARIFF 6061-O
Supplements 6, 10 and 11 Contain all Changes.

RULES AND CHARGES

ON

DIVERSION OR RECONSIGNMENT OF FREIGHT

AND

HOLDING OF SHIPMENTS FOR INSPECTION, SURRENDER OF BILLS OF LADING OR WRITTEN ORDERS

AT STATIONS ON THE

UNION PACIFIC RAILROAD COMPANY
CAMAS PRAIRIE RAILROAD COMPANY
YAKIMA VALLEY TRANSPORTATION COMPANY
BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

SEE ITEM 135 FOR INTERSTATE AND INTRASTATE APPLICATION

DIVERSION AND RECONSIGNMENT TARIFF

ISSUED APRIL 15, 1960 EFFECTIVE MAY 19, 1960

K. G. CARLSON
General Freight Traffic Manager
Omaha, Nebraska

Issued by
E. A. LANDBERG, Chief of Tariff Bureau
1416 Dodge St., Omaha 2, Nebraska

SUPPLEMENT 11 TO UPRR TARIFF 6061-O

RULES AND OTHER GOVERNING PROVISIONS - SPECIAL RULES AND REGULATIONS

| ITEM | SUBJECT | APPLICATION |
|---|---|---|
| 55-C | EXPIRATION DATES | Items, rates or other provisions making reference hereto expire with the d indicated below, unless sooner cancelled, changed or extended. |

| ITEM | PROVISIONS WHICH EXPIRE | DATE EXPIRING | FILE REFER |
|---|---|---|---|
| 215 | Provision subject to (E) Reference Mark.... | June 30, 1960..... | 28-215-1220 28-215-1266 |
| 215 | Provisions subject to (M) Reference Mark... | December 31, 1960. | 80-199-15-S |

SECTION 1

| ITEM | SUBJECT | DIVERSION AND RECONSIGNING RULES |
|---|---|---|
| 15-C (Con-tin-ued) | EXCEPTIONS | 1. RULES 1 to 17, also Items 200, 205 and 210 will not apply to:<br>(a) "Not used."<br>(b) Grain; Seeds (field or grass); Screenings from grain, unground, containing not more than 5 per cent of flaxseed; Soy (Soya or Soja) Beads; Hay Straw; Corn Husks or Corn Shucks; Pummies, unground and Alfalfa Meal, carloads held or stopped for inspection and disposition orders, except as provided in RULES 5 and 17. (See SECTION 3).<br>(c) Bananas; Berries, other than cold pack; Cantaloupes; Cocoanuts (but not including other edible nuts); Corn, fresh or green, other than cold pack; Cranberries; Fruits, fresh or green, other than cold pack; Melons; Pineapples or Vegetables, fresh or green, other than cold pack (including Potatoes and Onions) (See SECTION 2).<br>(d) Coal, Coal Briquettes or Coke (See SECTION 5).<br>(e) Traffic moved entirely within switching limits on which no road haul service is involved.<br>(f) "Not used."<br>(g) Live Stock (See SECTION 4).<br>(h) Grain, Bran, Flour, Alfalfa Hay, Alfalfa Feed, Middlings, Seeds, Shorts, Peas or Beans, milled, sacked, bulked, clipped, mixed, blended, graded, dried, stored or cleaned in transit under provisions of tariffs lawfully on file with the Interstate Commerce Commission. Applies only at South-Central District "A" points on the UP (See Item 125).<br>(i) Ore Concentrates and Matte sampled in transit as provided in UPRR Tariff 178-C, ICC 5409.<br>(j) Lumber Products creosoted in transit at Pocatello, Idaho.<br>2. No diversion or reconsignment charge will be made:<br>(a) For a single diversion or reconsignment if order for such diversion or reconsignment is received by local freight agent at initial billing point in time to permit instructions to be given to yard employees before car leaves the yard at such initial billing point (subject to NOTE).<br>NOTE - For the purpose of applying the rules in this tariff where cars originate at non-agency stations, the initial billing point will be considered the point of origin of the shipment.<br>(b) "Not used."<br>(c) Where a change in route is made necessary by embargo placed against the billed destination or route thereto subsequent to acceptance of the car by carrier at point of origin.<br>(d) Where all charges have been paid to billed destination and delivery accepted and a new bill of lading (not an exchange bill of lading) issued to new destination on basis of the rate (not proportional, reshipping or transshipping rate applicable on traffic originating beyond the new point of origin) applicable from the new point of origin shown in the new bill of lading and without any carrier or agent of the carrier acting for the shipper. Such a transaction will not be considered as a diversion or reconsignment under these rules.<br>(e) For diversion or reconsignment of Grain and Seeds held or stopped for inspection under provisions of SECTION 3 of this tariff.<br>(E)(f) For one diversion or reconsignment on interstate carload shipments of lumber or articles taking Lumber rates or arbitraries over the Lumber rates, while on the rails of the UP.<br>(M)(g) Carload shipments of Lumber and articles taking Lumber rates or arbitraries over Lumber rates when billed to destinations on the UP or via the UP through Omaha Neb., Council Bluffs, Ia. or Kansas City, Mo. to destinations beyond at rates and via routes published in TCFB Tariffs 17-T, 18-Q, 27-W or ICC Numbers 1568, 1589, 1556 and 1581, respectively, may be consigned "Hold for route for Orders" at no additional charge. Notwithstanding the provisions of Agent H.R. Hinsch's Freight Tariff 4-D, ICC 4808 to the contrary, the UP will, at its own convenience, hold such cars without the assessment of demurrage charges for a period of not to exceed fifteen days at Pocatello and Montpelier Ida., Ogden, Utah, Evanston, Green River, Rawlins, Laramie and Cheyenne, Wyo., Sidney North Platte or Grand Island, Neb. The fifteen-day period will be computed from 11:59 P.M. of the day of arrival at Pocatello, Ida. in the case of shipments moving through that point and from 11:59 P.M. of the day of delivery to the UP at Ogden or Salt Lake City, Utah when shipments are received at those junction points. |

For explanation of other reference marks, see last page of this supplement

SUPPLEMENT 11 TO UPRR TARIFF 6061-O

SECTION 1

| SUBJECT | DIVERSION AND RECONSIGNING RULES |
|---|---|
| EXCEPTIONS | 2. No diversion or reconsignment charge will be made:<br>Shipping order and waybill must specify "Hold Enroute for Orders" and must also show name and address of individual or firm to be notified when shipments are on hand at Omaha,Neb.,Council Bluffs,Ia. or Kansas City,Mo. The UP will notify designated individual or firm when shipments are on hand at Omaha,Neb.,Council Bluffs,Ia. or Kansas City,Mo.,as the case may be,and request instructions for disposition. The rules,regulations and charges published in Agent H.R. Hinsch's Freight Tariff 4-D,ICC 4808 will become applicable after such notice has been given.<br>(J)(E) Expires as indicated in Item 155-C. |

EXPLANATION OF REFERENCE MARKS

| REFERENCE MARK | | EXPLANATION |
|---|---|---|
| • | B | Denotes Reduction. |

B - Brought forward without change.

THE END

## APPENDIX B

April 15, 1960

File: W -

Mr. H. E. Warren, Chief
Special Permission Branch
Bureau of Traffic
Interstate Commerce Commission
Washington 25, D.C.

Dear Mr. Warren:

This has reference to my conversation with you earlier this week about the publication of a rule by the Union Pacific relating to the transportation of lumber and forest products.

Attached you will find the original and one copy of my Sixth Section Application 2705 which I will appreciate having you substitute for the Sixth Section Application which I prepared in Washington and left on file with you.

The Union Pacific has, as was informally suggested to me, published the proposed rule on statutory notice to become effective May 19th and we now seek authority to republish that rule on short notice effective not earlier than April 29th. In this new Sixth Section Application I have stated on Page 3 that whatever final disposition the Commission makes of the tariff items of other carriers that are involved in I&S Dockets 7050 and 7208 will be acceptable to the Union Pacific as a basis for disposing of the rule which we have now published and wish to republish effective by April 29th.

Will you please advise Mr. C. G. Dankmyer, General Traffic Agent for the Union Pacific at Washington, D.C., telephone Republic 7-0600, what action is taken by the

Commission in connection with this Sixth Section Application.

Yours very truly,

A. J. STILLING

cc: Mr. C. G. Dankmyer, G.T.A.
Union Pacific Railroad
Washington 5, D.C.

# UNION PACIFIC RAILROAD COMPANY

Omaha 2, Nebraska

Sixth Section Application 2705 — Special Permission No.—

To The Interstate Commerce Commission, Washington, D.C. — April 15, 1960

The Union Pacific Railroad Company, by A. J. Stilling, its Ass't. Frt. Trf. Mgr., does hereby respectfully petition the Interstate Commerce Commission that it be permitted, under Section 6 of the Interstate Commerce Act, as amended, to republish and put in force the following rules and regulations to become effective on less than statutory filing thereof with the Interstate Commerce Commission but not earlier than April 29, 1960:

To republish the new Paragraph (g) of Item 215-series as shown in the attached Supplement 11 to Union Pacific Tariff 6061-0, I.C.C. 5497.

Your petitioner further represents that the said rules or regulations, above mentioned, will be published in consecutively numbered supplement to UPRR Tariff I.C.C. 5497.

And your petitioner further bases such request upon the following facts, which present certain special circumstances and conditions justifying the request herein made:

On April 3, 1959, the United States District Court for the Southern District of Iowa issued an injunction reading in part as follows:

> "The Union Pacific Railroad Company, defendant, and its officers, agents, and servants be and they are hereby permanently enjoined and restrained from extending to any shipper or person any privileges or facilities of delay in the transportation or delivery of

shipments of lumber, unless and until such time, if at all, as there is in force with respect to the Union Pacific Railroad Company, defendant, a tariff lawfully on file with th Interstate Commerce Commission naming the rates and charges for such privileges or facilities."

Thereafter the District Court, upon showing by the Union Pacific that it had appealed to the Supreme Court of the United States, stayed or suspended the effectiveness of its injunction to enable the Union Pacific to continue its slow lumber service pending final decision of the appeal by the Supreme Court. The Court felt that it would be unfair and unjust to compel the Union Pacific to stop providing its slow lumber service while all other competing carriers would continue to provide such service.

On April 4, 1960, the Supreme Court of the United States rendered a per curiam decision affirming the judgment of the District Court. The Supreme Court stated that it agreed with the District Court that Union Pacific's delayed lumber service constitutes "privileges or facilities" under Section 6(7) of the Interstate Commerce Act, and therefore "must be published and filed in its tariff." The final paragraph of the Supreme Court's decision reads as follows:

> "If and when appellant publishes and files such a tariff, as other roads have already done, the Commission can then consider the reasonableness and justness of appellant's service in the light of that rate, giving due regard to any unjust or unreasonable preferences or advantages that might result to shippers or other roads should same not be approved."

The Supreme Court's rules of practice expressly require that the Supreme Court's mandate or judgment will be forwarded to the District Court at the expiration of 25 days following the date on which the Supreme Court

rendered its decision, or in other words immediately after April 29. The 25-day period is 5 days less than the 30-day statutory requirement for filing tariffs with the Commission, and therefore obviously necessitates permission for the Union Pacific to file its proposed tariff upon less than statutory notice. If short notice is not granted so that the proposed rule can become effective not later than April 29, 1960, the District Court upon receipt of the mandate or order of the Supreme Court will be required to make its injunction effective, unless the Union Pacific can show to the District Court that the Union Pacific has on file and effective upon short notice its tariff rule which both the District Court and the Supreme Court clearly intended or contemplated that the Union Pacific would file with the Commission. In the circumstances, short notice filing of the Union Pacific's proposed tariff rule is essential to enable the Union Pacific to continue in its slow lumber service in competition with the several other railroads whose slow lumber service was investigated and still is under reconsideration by the Commission in I. & S. Docket No. 7050, Lumber, Free Time Allowance at Hold Points, 308 I. C. C. 247.

The tariff rule to be published by the Union Pacific, although not identical, is similar to and accomplishes the same purpose as rules now in effect in the following tariffs of other Transcontinental and Midwestern railroads:

M-StL 41-Q, I.C.C. 87, Item 25-D
Soo Line 226-R, I.C.C. 7490, Item 90-E
CGW 40-C, I.C.C. 5617, Item 140-C
CRI&P 32017-R, I.C.C. C 13584, Item 359-C
IC 13075-S, I.C.C. A 11738, Par. 6-A, Sec. 1, Note 2
C&NW 16390-W, I.C.C. 11362, Item 20-C, Note 2
CMStP&P 15800-M, I.C.C. B 7891, Item 65-E
CP 1006-G, I.C.C. W 1070

Many hundreds of carloads of lumber from the west are now and continuously enroute in delayed and hold service on the Union Pacific and the numerous other available transcontinental routes. A large number of western shippers must have that type of transportation service and would be seriously damaged if it is suddenly discontinued. It seems clear that it is in the best interests of not only the numerous shippers involved and the carriers, but the Commission as well, that the Union Pacific and any other carriers that may choose to follow the same pattern, be permitted to publish a rule as proposed herein so that the overall situation can be reviewed by the Commission in the light of the court's opinion and in the further proceedings that will undoubtedly be conducted by the Commission in its I&S Dockets 7050 and 7208 and also Docket 33172. Whatever final disposition is made of those proceedings will be acceptable to the Union Pacific as disposition of the rule which we herein seek authority to make effective on April 29, 1960.

If this program is followed it is possible that whatever conclusions may finally be reached by the Commission can be carried out with little or no harm to any of the large number of interested shippers and carriers involved.

UNION PACIFIC RAILROAD COMPANY

By A. J. Stilling
Ass't Frt. Trf. Mgr

Subscribed and sworn to before
me this 15th day of April, 1960.

E. A. Landberg
Notary Public

# SUPREME COURT OF THE UNITED STATES

No. 98.—October Term, 1959.

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|---|---|
| Union Pacific Railroad Co., Appellant, v. United States of America. | On Appeal From the United States District Court for the Southern District of Iowa. |

[April 4, 1960.]

Per Curiam.

Appellant, along with other railroads, has for years engaged in the "roller lumber traffic" by performing intentionally delayed service in the transportation of lumber from the West Coast to market. Six roads so engaged have filed tariffs covering such services at the same rate as their fast freight, and the Interstate Commerce Commission now has such tariffs under investigation and consideration. Appellant, however, has refused to file a tariff covering such service but continues to handle roller lumber traffic on the same tariff as its fast freight.

The appellee, at the instance of the Interstate Commerce Commission, sought and obtained a permanent injunction restraining appellant from performing its roller lumber traffic service until it publishes and files a tariff covering the same. The District Court found that appellant renders a 14-day delayed lumber service over a route ordinarily requiring from two to four days. The delay is accomplished by the holding of cars on sidings at certain points on its trunk lines awaiting diversion orders to move the shipment forward over the railroad's regular service. This affords the shipper additional time to find a market for the lumber while it is in transit. This service, the District Court found, incurred additional "operational problems and costs" for appellant, including switching, siding, storage and "per diem cost for the use of foreign cars" not present in its fast freight service and not

included in its published tariff. We agree with the District Court that such delayed service constitutes the furnishing of additional "privileges or facilities" under § 6 (7) of the Interstate Commerce Act, and, therefore, must be published and filed in its tariff. 49 U. S. C. § 6 (1). See *Turner Lumber Co.* v. *Chicago, M. & St. P. R. Co.*, 271 U. S. 259, 262 (1926).

If and when appellant publishes and files such a tariff, as other roads have already done, the Commission can then consider the reasonableness and justness of appellant's service in the light of that rate, giving due regard to any unjust or unreasonable preferences or advantages that might result to shippers or other roads should the same not be approved.

*Affirmed.*